

**CITY OF NEWPORT BEACH
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE**

**THURSDAY, JUNE 6, 2013
REGULAR MEETING – 6:30 p.m.**

**MICHAEL TOERGE
Chair**

**BRADLEY HILLGREN
Vice Chair**

**FRED AMERI
Secretary**

**TIM BROWN
KORY KRAMER
JAY MYERS
LARRY TUCKER**

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

**BRENDA WISNESKI, Deputy Community
Development Director**

LEONIE MULVIHILL, Assistant City Attorney

TONY BRINE, City Traffic Engineer

MARLENE BURNS, Administrative Assistant

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA
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I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF MAY 9, 2013

Recommended Action: Approve and file

VII. NEW BUSINESS

ITEM NO. 2 REVIEW OF PRELIMINARY FISCAL YEAR 2013-2014 CAPITAL IMPROVEMENT PROGRAM (PA2007-131)

Site Location: Citywide

Summary:

Review of the City's Capital Improvement Program (CIP) by the Planning Commission is required by State Statute. The purpose of the review is to determine consistency with the General Plan.

CEQA Compliance:

Determination of General Plan conformity is not considered a "project" as defined by the California Environmental Quality Act (CEQA) in that this action has no potential to result in a direct or indirect physical change to the environment and subsequent environmental review of each project will be conducted at the appropriate time in accordance with CEQA.

Recommended Action:

1. Conduct a review of the Preliminary Fiscal Year 2013-2014 Capital Improvement Program; and
2. Determine that the CIP projects are consistent with the policies of the General Plan and direct staff to report this finding to the City Council.

ITEM NO. 3 DISCUSSION OF RESIDENTIAL LOT MERGER CODE AMENDMENT (PA2012-102)

Site Location: Residential Zoning Districts City-wide

Summary:

Discussion of an amendment to Section 19.68.030.H of the Subdivision Code (Title 19) to revised required findings for lot mergers and an amendment to Table 2-2 and Table 2-3 of Section 20.18.030 of the Zoning Code (Title 20) that would modify residential development standards to increase required minimum side setbacks on newly created residential lots.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION

ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

**ITEM NO. 6 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS
WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR
REPORT**

ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT

Comments on June 6, 2013 Planning Commission Agenda

Comments by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229). ~~strikeout~~ underline format is used to suggest changes to the passages quoted in *italics*

Agenda Notice

1. Under "NOTICE TO THE PUBLIC" there are several minor errors which the Commission may wish to correct in future agendas:
 - a. Paragraph 1:
 - i. "Regular meetings of the Planning Commission are held on the Thursdays preceding the second and fourth Tuesdays of each month"
 - ii. "for public inspection in the Community Development Department, Planning Division located at ~~3300-Newport-Boulevard~~ 100 Civic Center Drive"
 - b. Paragraph 2: "not on the agenda but ~~are~~ within the subject matter jurisdiction of the Commission."
 - c. Paragraph 3: "Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs...": Since the agenda is usually released well in advance of the 72 hour limit this may not be an issue, but if it were not, it would be difficult to comply with the request to submit ADA requests *more than* 72 hours before the meeting, as that time might have passed before the agenda had been seen. And, is Leilani Brown the correct contact person for PC meetings?
2. Item No. 3 Summary: "Discussion of an amendment to ~~the~~ Section 19.68.030.H of the Subdivision Code (Title 19) to ~~revised~~ revise required findings for lot mergers and an amendment to Table 2-2 and Table 2-3 of Section 20.18.030 of the Zoning Code (Title 20) that would modify residential development standards to increase required minimum side setbacks for newly created residential lots."

Item No. 1 Minutes of May 9, 2012

General comments:

1. As mentioned in public comment at the May 9 meeting, it is good that staff is posting and archiving [audio minutes](#), because the content of the written minutes, including this set, is frequently phrased or expressed in a way that, although probably intended to be thorough, makes it very difficult, at least for me, to understand the substance of what was said.
2. In that regard, I continue to think it would be helpful to include audio timing marks in the written minutes so the relevant passage can be easily located.

Page 2, line 2 from end: "Chair Toerge felt ~~that the~~ issue of setback and how it might grow and expand has not been addressed satisfactorily."

Page 2, line 4: "He recommended limiting the floor-area-ratio, increasing setbacks on a ~~scale-basis~~ scaled basis up to five (5) feet and clearing the ambiguity."

- This is an example of how the intent of the remarks is often difficult to decipher from the written minutes. Chair Toerge (at 53m:53s in the audio recording) did *not* recommend staff "clear the ambiguity" as a separate task. Instead, he expressed his opinion that if the setback for merged lots was scaled to 10% of the resulting lot width, up to a maximum result

of 5 feet, but not less than the existing minimum setback for the neighborhood, then that rule would “clear the ambiguity” and the same rule could be applied throughout the City. One would really *not* be able to understand this from the written minutes alone.

Item No. 2 Review of Preliminary Fiscal Year 2013-2014 Capital Improvement Program (PA2007-131)

Since Measure EE (November, 2012; effective January 9, 2013) stripped the Planning Commission of its original citizen-imposed duty to “*Make recommendations to the City Council concerning proposed public works and for the clearance and rebuilding of blighted or substandard areas within the City,*” the Commission’s review, unless instructed otherwise by the City Council, now appears to be restricted to the rather mundane task of finding the projects consistent with the General Plan.

Item No. 3 Residential Lot Merger Code Amendment (PA2012-102)

1. Page 2: In the example:
 - a. I believe that in line 3 of the proposed Finding 5, the word “*not*” was intended to be deleted. The existing language contains a double negative (“***will not*** create an ... ***that is not*** compatible”). The intent seems to require a “positive” finding: “***will result in... that is*** compatible.”
 - b. In the proposed Guidance 5.c, if “*vicinity*” is being used to mean “*neighborhood*,” why not say “*neighborhood*”?
 - c. In the explanation of the intended difference between “*adjoining*” and “*adjacent*,” what does the expression “*having district boundaries ... in common*” mean? I can find no explanation of “***district boundaries***” in the Zoning Code, other than “***Zoning district boundaries***,” which does not seem to be the intent, for I can easily imagine lots along the same Zoning District boundary that are not at all close to one another.
2. Page 3: The examples seem contrary to the scaling proposal suggested by Chair Toerge at the previous meeting (see comment on Draft Minutes, above), which I think was that a 10% rule be applied to merged lots *less* than 50 feet wide (since the maximum result was to be 5 feet), rather than to lots *more* than 50 feet wide. Is there a limit to how large the calculated (and required) setback could be under these proposed rules?
3. Page 5: I don’t think I understand the discussion provided under “*Minimizing Non-conformities*.” I understand that there might be two standards based on when and how a lot was created, but I don’t see how a newly merged lot could be non-conforming if the requirements are always more stringent than the existing ones. I also don’t understand how adoption of the proposed code changes would make any existing lots non-conforming, since it would apply only to lots created by mergers approved *after* the new rules became effective.
4. Page 6: The conclusion that “*Given [the] small number of applications, this topic could best be addressed on a case by case basis*” may be the correct one, but I don’t see how it solves the original problem which, in the specific case of the Ocean Boulevard lot merger, was the City Council’s frustration with the absence of anything in the Municipal Code giving them the authority to approve the merger subject to conditions, including conditions requiring increased setbacks.

Newport Beach Planning Commission Agenda Item 2 (6/6/13)

Additional comments by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229).

Item No. 2 Review of Preliminary Fiscal Year 2013-2014 Capital Improvement Program (PA2007-131).

As I understand the staff report, this item is being heard pursuant to California Government Code Section 65401, which is reproduced below.

Having attempted to read Section 65401, I have two concerns:

1. It appears to me that the list of proposed public works to be reviewed for conformity with the City's adopted general plan is supposed to include *all* proposed projects involving work within the City limits, not just those funded by the City. I do not believe the Planning Commission has before it such a full, coordinated list.
2. Although the staff report cites sections from the General Plan that each listed project is *consistent* with, that does not, to my mind, establish that the project could not be *inconsistent* with some other aspect of the General Plan, and therefore not in conformity with it.

I hope the Commission will ask that future CIP lists include projects proposed to be undertaken by *other agencies* (Caltrans, OCSD, CMSD, IRWD, and NMUSD are just a few that come to mind) and will carefully consider if each listed project, including those funded by the City, might be *inconsistent* with some provision of the General Plan *not* listed in the staff report. That would seem to me to be the task set forth by Section 65401.

California Government Code

65401. If a general plan or part thereof has been adopted, within such time as may be fixed by the legislative body, each county or city officer, department, board, or commission, and each governmental body, commission, or board, including the governing body of any special district or school district, whose jurisdiction lies wholly or partially within the county or city, whose functions include recommending, preparing plans for, or constructing, major public works, shall submit to the official agency, as designated by the respective county board of supervisors or city council, a list of the proposed public works recommended for planning, initiation or construction during the ensuing fiscal year. The official agency receiving the list of proposed public works shall list and classify all such recommendations and shall prepare a coordinated program of proposed public works for the ensuing fiscal year. Such coordinated program shall be submitted to the county or city planning agency for review and report to said official agency as to conformity with the adopted general plan or part thereof. (*Amended by Stats. 1970, Ch. 1590.*)